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EX PARTE OR LATE FILED

VIA HAND DELIVERY

December 19, 2002

EX PARTE

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
CC Docket No. 01-337

Dear Ms. Dortch:

On December 18, 2002, Donna N. Lampert and the undersigned, both of Lampert and O'Connor, P.C., on behalf of AOL Time Warner Inc. ("AOL"), had a telephone conference with Lisa Zaina, Senior Legal Advisor to Commissioner Jonathan S. Adelstein, to discuss the above-referenced docket

In the meeting, consistent with AOL's Reply Comments filed April 22, 2002 in CC Docket No. 01-337, we discussed the following points in reference to the issues raised by SBC in its October 3, 2001 Petition for Expedited Ruling That It Is Non-Dominant in Its Provision of Advanced Services and For Forbearance from Dominant Carrier Regulation of Those Services.

We explained that as a factual matter, even though there is competition for retail information services, there is still not competition for wholesale broadband transmission services. Based on the facts and the record before it, we urged the Commission not to classify the BOCs as non-dominant, and instead to maintain the requirements that BOCs make available the transmission services to unaffiliated ISPs on the same rates, terms and conditions that the BOC provides itself. We also emphasized that the Commission must ensure transparency in order to deter anticompetitive behavior and to enhance enforcement. We noted that the core principles of nondiscrimination and transparency underlying the *Computer Inquiry* rules are valuable, pro-competitive tools that are currently used by unaffiliated ISPs.

Second, we noted that these successful principles should be retained even if the Commission alters current tariff requirements. We addressed the November 15, 2002 and November 26, 2002 *ex parte* letters filed by SBC and stressed the importance of ensuring

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nondiscrimination between BOC affiliated and nonaffiliated ISPs. We urged the Commission to provide explicit guidance maintaining the core principles, specifying the services to which they would apply and ensuring that rates, terms and conditions available to affiliated ISPs will continue to be publicly accessible and available to unaffiliated ISPs. We noted that maintaining transparency is essential to the enforcement process. We also urged that the Commission specify the process by which any tariff requirement changes (e.g., web-posting) and the continuing substantive obligations to ensure that customers have sufficient notice and an opportunity to modify current business arrangements as may be necessary.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record in the above-captioned proceeding. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc

cc: Lisa Zaina